

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

DAVID OPPENHEIMER,

Plaintiff,

v.

SUPERSTAR TICKETS, INC.,

Defendant.

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Civil Action No.:

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, DAVID OPPENHEIMER (“Oppenheimer” or “Plaintiff”), brings this complaint in the United States District Court for the Eastern District of Virginia against SUPERSTAR TICKETS, INC. (“Superstar” or “Defendant”), alleging as follows:

PARTIES

1. Plaintiff is an experienced live concert, travel, and aerial photographer with twenty-one (21) years experience in the field of commercial photography. A partial list of Plaintiff’s clients includes: Rolling Stone, MSNBC, Fuse, MTV, and AOL. Plaintiff resides in Asheville, North Carolina.
2. On information and belief, Defendant is a Corporation existing under the laws of the Commonwealth of Virginia, with headquarters in Arlington, Virginia. Defendant owns, operates, and is solely responsible for the content on its commercial website, www.superstar.com.

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), in that the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.
6. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Plaintiff captured the photograph, “NASCAR_2_Bristol_OPP4093.jpg” (“Copyrighted Photograph”) on March 17, 2013. [Exhibit 1]. Plaintiff captured Copyrighted Photograph using great technical skill and careful timing, as well as significant time and energy.
8. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on April 9, 2013 (Registration No.: VA 1-136-802). [Exhibit 2].
9. On or about April 3, 2014, Plaintiff posted Copyrighted Photograph to www.performanceimpressions.com (Last visited August 1, 2019). [Exhibit 3].
10. Plaintiff embedded Copyright Photograph with extensive metadata, including a copyright notice and language warning against copying Copyright Photograph without license or permission from Plaintiff. [Exhibit 4].

11. Beginning on or about May 1, 2017, Defendant copied, uploaded, then posted Copyrighted Photograph, including Plaintiff's copyright notice, to Defendant's commercial website, www.superstar.com/media/performers/banners/Food_City_500.jpg (Last visited August 1, 2019) [Exhibit 5].
12. Beginning on or about May 1, 2017, Defendant posted a cropped version of Copyrighted Photograph to the Defendant's commercial website, www.superstar.com (Last visited April 1, 2019) [Exhibit 6].
13. Defendant used Copyrighted Photograph as a full-page banner image to advertise tickets for the NASCAR Sprint Cup Series: Food City 500 held at the Bristol Motor Speedway in Bristol, Tennessee. [Exhibit 6].
14. Defendant cropped out Plaintiff's clear and unambiguous name and copyright notice before posting Copyright Photograph to Defendant's commercial website, www.superstar.com. [Exhibit 6].
15. Defendant copied and used Copyrighted Photograph without license or permission from Plaintiff.
16. As of the date of this filing, despite numerous warnings by Plaintiff, Defendant has failed to remove the uncropped version of Copyrighted Photograph from Defendant's commercial website.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

17. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
18. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the

subject of a valid and complete Certificate of Copyright Registration by the Register of Copyrights.

19. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.
20. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendant's commercial website, www.superstar.com. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.
21. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
22. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendant attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

COUNT II: REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT
MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. § 1202

23. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying Copyrighted Photograph on Defendant's public and commercial website, www.superstar.com. In doing so, Defendant violated 17 U.S.C. § 1202(a)(1) and (b)(1).

24. As a result of Defendant's actions, Plaintiff is entitled to actual or statutory damages pursuant to 17 U.S.C. § 1203(c). Plaintiff is further entitled to their attorney's fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: August 9, 2019


/s/ David C. Deal
David C. Deal (VA Bar No.: 86005)
The Law Office of David C. Deal, P.L.C.
P.O. Box 1042
Crozet, VA 22932
434-233-2727, Telephone
david@daviddeal.com
Counsel for Plaintiff

EXHIBIT 1



EXHIBIT 2

Certificate of Registration

 This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante
Register of Copyrights, United States of America

Registration Number
VAu 1-136-802

Effective date of
registration:
April 9, 2013

Title _____
Title of Work: 2013 Events Photographed by David Gordon Oppenheimer

Completion/Publication _____
Year of Completion: 2013

Author _____
■ Author: David Gordon Oppenheimer
Author Created: photograph(s)
Work made for hire: No
Citizen of: United States Domiciled in: United States
Year Born: 1970

Copyright claimant _____
Copyright Claimant: David Gordon Oppenheimer
P.O. Box 8105, Asheville, NC, 28814, United States

Rights and Permissions _____
Organization Name: Performance Impressions LLC
Name: David Gordon Oppenheimer
Email: dave@performanceimpressions.com Telephone: 828-273-9339
Address: P.O. Box 8105
Asheville, NC 28814 United States

Certification _____
Name: David Gordon Oppenheimer
Date: April 9, 2013

Page 1 of 1

EXHIBIT 3

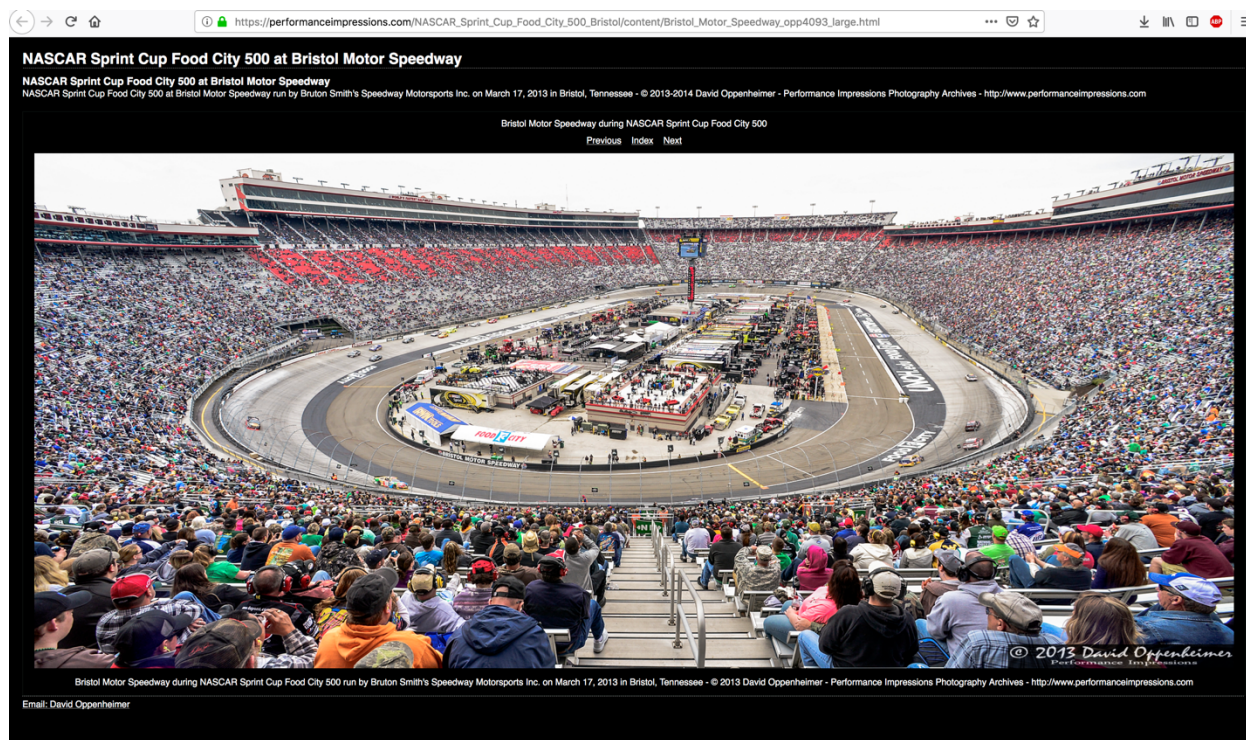


EXHIBIT 4

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File Size	3.3 MB	
File Type	JPEG	
File Type Extension	.jpg	
Mime Type	image/jpeg	
Exif Byte Order	Little-endian (Intel, II)	
Image Description	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500 run by Bruton Smith's Speedway Motorsports Inc. on March 17, 2013 in Bristol, Tennessee - © 2013 David Oppenheimer - Performance Impressions Photography Archives - http://www.performanceimpressions.com	
Make	NIKON CORPORATION	
Model	NIKON D4	
Orientation	Horizontal (normal)	
X Resolution	240	
Y Resolution	240	
Resolution Unit	inches	
Software	Adobe Photoshop CS6 (Windows)	
Modify Date	2013:05:13 16:52:59	
Artist	David Oppenheimer	
Copyright	© 2013 David Oppenheimer	
Exposure Time	1/400	
F Number	9	
Exposure Program	Manual	
Iso	640	
Sensitivity Type	Recommended Exposure Index	
Exif Version	2.50	
Date Time Original	2013:03:17 15:26:23	
Create Date	2013:03:17 15:26:23	
Shutter Speed Value	1/400	
Aperture Value	9	
Exposure Compensation	0	
Max Aperture Value	2.8	
Metering Mode	Center-weighted average	
Light Source	Unknown	
Flash	No Flash	
Focal Length	14.0 mm	
Sub Sec Time Original	50	
Sub Sec Time Digitized	50	
Color Space	Uncalibrated	
Exif Image Width	2500	
Exif Image Height	1073	
Sensing Method	One-chip color area	
File Source	Digital Camera	
Scene Type	Directly photographed	
Cfa Pattern	[Red,Green][Green,Blue]	
Custom Rendered	Normal	
Exposure Mode	Manual	
White Balance	Auto	
Digital Zoom Ratio	1	
Focal Length In35Mm Format	14 mm	
Scene Capture Type	Standard	
Gain Control	Low gain up	
Contrast	Normal	
Saturation	Normal	
Sharpness	Normal	
Subject Distance Range	Unknown	
Serial Number	2015007	
Lens Info	14mm f2.8	
Lens Model	14.0 mm f/2.8	
Compression	JPEG (old-style)	
Thumbnail Offset	1306	
Thumbnail Length	6380	
Current Ipic Digest	5c153ba8e2573c74aa7170e58159a9f1	
Coded Character Set	UTF8	
Application Record Version	4	
Caption- Abstract	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500 run by Bruton Smith's Speedway Motorsports Inc. on March 17, 2013 in Bristol, Tennessee - © 2013 David Oppenheimer - Performance Impressions Photography Archives - http://www.performanceimpressions.com	
Writer- Editor	David Oppenheimer	
Special Instructions	No use permitted without a written license from David Oppenheimer or Performance Impressions LLC	
By-Line	David Oppenheimer	
By-Line Title	Concert Photographer	
Object Name	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500	
Time Created	15:26:23+00:00	
Digital Creation Date	2013:03:17	
Sub-Location	Bristol Motor Speedway	
Province- State	Tennessee	
Country- Primary Location Name	United States of America	
Country- Primary Location Code	USA	
Original Transmission Reference	NASCAR, Bristol Motor Speedway,	
KEYWORDS		
0	NASCAR	

1	Bristol Motor Speedway	
2	Bristol	
3	Sprint Cup Food City 500	
4	Tennessee	
5	race	
6	race cars	
7	stock cars	
8	race track	
9	racing	
10	stadium	
11	Sprint Cup	
12	Food City 500	
13	fast	
14	Bruton Smith	
15	Speedway Motorsports	
16	speedway	
17	motorsports	
18	SMI	
19	BMS	
20	racetrack	
<hr/>		
Copyright Notice	© 2013 David Oppenheimer	
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Displayed Units X	inches	
Displayed Units Y	inches	
Print Style	Centered	
Print Position	0 0	
Print Scale	1	
Global Angle	30	
Global Altitude	30	
Copyright Flag	1	
Uri	http://www.performanceimpressions.com	
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URL LIST		
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Num Slices	1	
Pixel Aspect Ratio	1	
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Has Real Merged Data	Yes	
Writer Name	Adobe Photoshop	
Reader Name	Adobe Photoshop CS6	
Photoshop Quality	12	
Photoshop Format	Standard	
Progressive Scans	3 Scans	
Xmp Toolkit	Adobe XMP Core 5.3-c011 86 145661, 2012/02/06-14 56:27	
Creator Tool	Adobe Photoshop Camera Raw 7.1 (Windows)	
Metadata Date	2013:05:13 16:52:59-04:00	
Format	image/jpeg	
Country	United States of America	
Caption Writer	David Oppenheimer	
Credit	David Oppenheimer	
Date Created	2013:05:04 15:26:23:005	
Color Mode	RGB	
icc Profile Name	Adobe RGB (1998)	
Headline	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500	
Instructions	No use permitted without a written license from David Oppenheimer or Performance Impressions LLC	
Authors Position	Concert Photographer	
City	Bristol	
State	Tennessee	
Transmission Reference	NASCAR, Bristol Motor Speedway, Bristol, Sprint Cup Food City 500, Tennessee, race, race cars, stock cars, race track, racing, stadium, Sprint Cup, Food City 500, fast, Bruton Smith, Speedway Motorsports, speedway, motorsports, SMI, BMS, racetrack,	
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Process Version	6.7	
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Incremental Tint	13	
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Shadow Tint	0	
Red Hue	0	
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Green Hue	0	
Green Saturation	0	
Blue Hue	0	
Blue Saturation	0	
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Hue Adjustment Orange	0	
Hue Adjustment Yellow	0	
Hue Adjustment Green	0	
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Hue Adjustment Blue	0	
Hue Adjustment Purple	0	
Hue Adjustment Magenta	0	













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19	BMS
20	racetrack
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1	xmp.did:8C58FD54CB8BE2118326CD82AD9F55BC
HISTORYACTION	
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1	saved
2	converted
3	saved
4	saved
5	converted
6	saved
HISTORYPARAMETERS	
0	converted from image/peg to image/vnd.adobe.photoshop, saved to new location
1	from image/vnd.adobe.photoshop to application/vnd.adobe.photoshop
2	from application/vnd.adobe.photoshop to image/peg
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1	Adobe Photoshop CS6 (Windows)
2	Adobe Photoshop CS6 (Windows)
3	Adobe Photoshop CS6 (Windows)
HISTORYCHANGED	
0	/
1	/
2	/
3	/
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TONECURVEPV2012GREEN	
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TONECURVEPV2012BLUE	
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1	255, 255
Creator Address	P.O. Box 8105 
Creator City	Asheville 
Creator Region	North Carolina 
Creator Postal Code	28814 
Creator Country	United States 
Creator Work Telephone	(828) 273-9339 
Creator Work Email	dave@performanceimpressions.com 
Creator Work Uri	http://www.performanceimpressions.com 
Usage Terms	All Rights Reserved - no use permitted without a written license from David Openheimer or Performance Impressions LLC 
Profile Cmm Type	ADBE
Profile Version	2.1.0
Profile Class	Display Device Profile
Color Space Data	RGB
Profile Connection Space	XYZ
Profile Date Time	1999:05:03 00:00:00
Profile File Signature	acsp

EXHIBIT 5

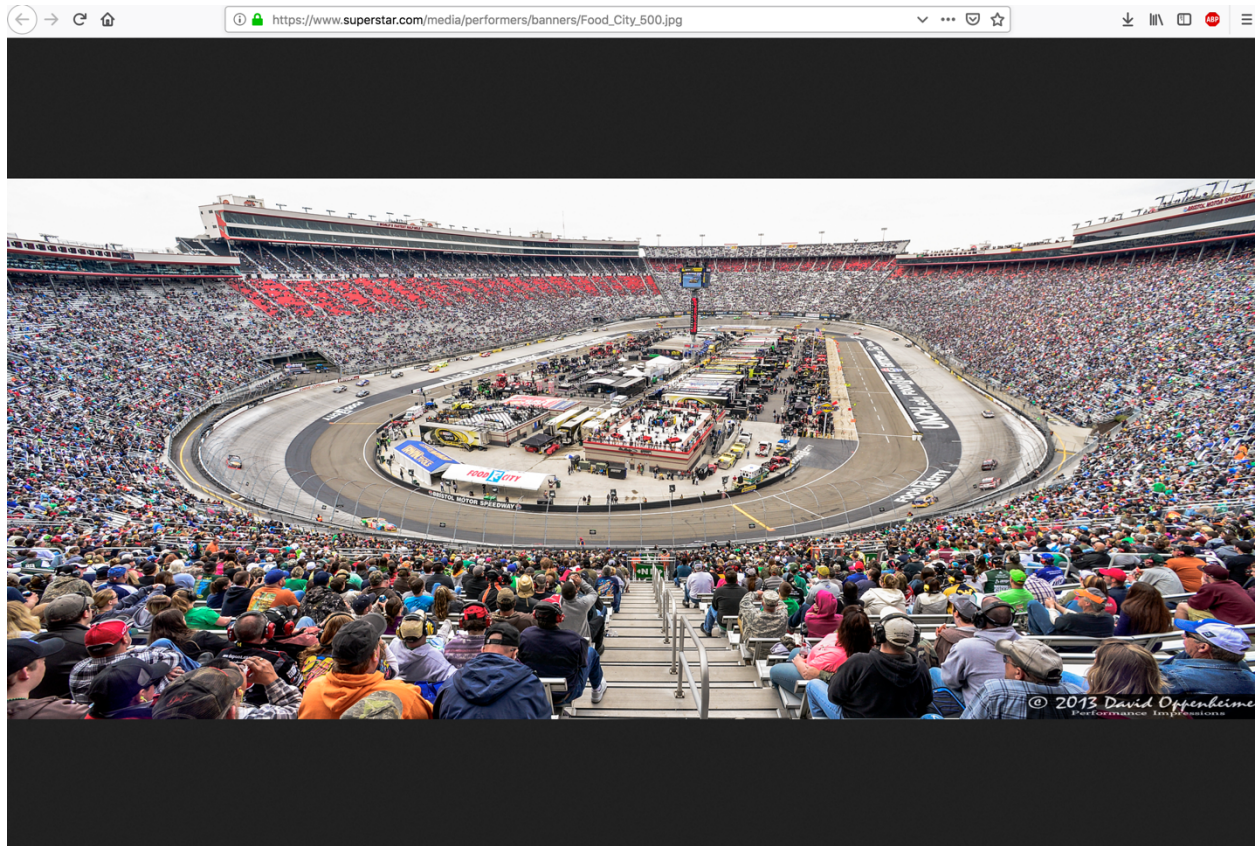


EXHIBIT 6

The screenshot displays the SuperStar.com website interface. At the top, there is a navigation bar with the SuperStar logo, a search bar, and links for Sports, Concerts, Theatre, Sign-up, and Sign In. The main banner features a large image of a NASCAR race track filled with spectators, with the text "Food City 500 Tickets & Schedule" overlaid. Below the banner, there are filters for "All Events" and "All Days", "Weekend", and "Weekday". A featured event card for "NASCAR Sprint Cup Series: Food City 500" is shown, indicating it is on Sunday, April 23, at 2 PM, at Bristol Motor Speedway in Bristol, TN, with tickets starting from \$75.00. To the right, there is a "Top Picks" section with various sports teams and events like New York Knicks, Monster Jam, Chicago Cubs, New York Yankees, Boston Red Sox, Miami Heat, WWE, San Francisco Giants, AMA Monster Energy Supercross, and AMA Supercross. Below this is a "Related Categories" section with links for Sports, Racing, and NASCAR. At the bottom right, there is a "Purchase Guarantee" section with a checkmark icon, explaining the site's commitment to providing a great event experience and detailing the Food City 500 Ticket Purchase Guarantee, which includes a 125% money-back guarantee if the tickets do not grant admission to the event.

superstar.com

Search

Sports Concerts Theatre Sign-up Sign In

Food City 500 Tickets & Schedule

All Events

All Days Weekend Weekday

SUN APR 23 2 PM

NASCAR Sprint Cup Series: Food City 500

Bristol Motor Speedway - Bristol, TN

from \$75.00

Top Picks

New York Knicks Monster Jam

Chicago Cubs New York Yankees

Boston Red Sox Miami Heat

WWE San Francisco Giants

AMA Monster Energy Supercross

AMA Supercross

Related Categories

Sports Racing NASCAR

Purchase Guarantee

Your next live event experience is in good hands, see how SuperStar.com protects fans and guarantees orders!

Food City 500 Ticket Purchase Guarantee

1. Your tickets are guaranteed to arrive on time for the event.
2. Your tickets will be 100% authentic, genuine tickets.
3. If the tickets you selected are not available after confirmation, comparable or better tickets may be substituted at no additional cost to you.
4. We're committed to making your buying experience fantastic, and we back this up with a 125% money-back guarantee if the tickets you received did not grant admission to the event.